

Application Serial No. 09/700,806
Amendment dated May 24, 2005
Reply to Office Action of February 24, 2005

REMARKS

Applicants respectfully request entry of the amendment and reconsideration of the claims. Claims 1, 14, 16, 19, 23, 27, 28, and 30 have been amended. Claims 15, 21, 22, and 26 have been canceled. Claims 32-42 are new. After entry of the amendment, claims 1, 8, 10, 14, 16, 17, 19, 23-25, and 27-42 will be pending.

Claims 16, 17, and 31 have been withdrawn by the Examiner as drawn to a non-elected species. Applicants note that upon indication of allowance of the elected specie, Applicants are entitled to consideration of additional species.

The amendment is supported throughout the specification, including at page 12, lines 24-35, Table 3 at page 40, Example 1, and Figure 1B. Applicants submit the amendment does not raise any issues of new matter.

Enablement

Claims 1, 8, 10, 22-24, and 26-30 were rejected under 35 U.S.C. § 112, first paragraph, as lacking enablement. The Examiner alleges methods of treating diabetes are not enabled by the specification. In order to expedite prosecution, the claims as amended recite treating hypertension, thrombosis, angina, atherosclerosis, or heart failure. The Examiner acknowledges methods of treating hypertension, thrombosis, angina, atherosclerosis, or heart failure are enabled. Applicants do not acquiesce to the rejection and reserve the right to pursue the canceled subject matter in a continuation application.

Withdrawal of this rejection is respectfully requested.

Claims 1, 8, 10, 14, 15, 21, 22, and 26-29 were rejected under 35 U.S.C. § 112, first paragraph, as lacking enablement. The Examiner alleges VEGF variants having one or more amino acid substitutions in a loop containing FLT-1 contact residues are not enabled. In order to expedite prosecution, the claims as amended are directed to VEGF variants comprising one or more amino acid substitutions at residues 63, 64, 65, 66, or 67. The Examiner acknowledges such VEGF variants are enabled (page 3 of Office Action). Applicants do not acquiesce to the rejection and reserve the right to pursue the canceled subject matter in a continuation application.

Withdrawal of this rejection is respectfully requested.

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Obviousness

Claims 1, 8, 10, 14, 15, 21, and 22 were rejected under 35 U.S.C. § 103(a) as unpatentable over Keyt et al. in view of Meyer et al. and Kroll et al. Applicants respectfully traverse the rejection.

The Examiner bears the initial burden of factually supporting any prima facie conclusion of obviousness. MPEP § 2142. Three criteria must be met by the Examiner to establish a prima facie case of obviousness. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine the teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference must teach or suggest all the claim limitations. In re Vaeck, 947 F.2d 488 (Fed. Cir. 1991).

The Examiner has failed in the least to establish that the claimed combination of references teaches or suggests all the elements of Applicants' claims. The primary reference Keyt et al. does not teach or suggest VEGF variants having the claimed combination of amino acid substitutions. None of the secondary references remedy the shortcomings of the primary reference. Neither Meyer et al. nor Kroll et al. teach or suggest the VEGF variants as claimed.

Based on the forgoing, Applicants submit the Examiner has failed to establish a prima facie case of obviousness. The cited combination of references does not teach or suggest methods of treating nitric oxide associated disorders with VEGF variants having the claimed combination of amino acid substitutions. Withdrawal of the obviousness rejection is respectfully requested.

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Conclusion

In view of the above amendments and remarks, Applicant respectfully requests a Notice of Allowance. If the Examiner believes a telephone conference would advance the prosecution of this application, the Examiner is invited to telephone the undersigned at the below-listed telephone number.

Respectfully submitted,

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Date: _____

May 24, 2005

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